

HON. PHILIP M. HALPERN
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF NEW YORK
300 Quarropas Street
White Plains, New York 10601
(914) 390-4155

MEMORANDUM

RE: *Judicial Dispute Resolution Network – International*
Inaugural Meeting (May 18-19, 2022 @ 7-10 a.m. via Zoom)

I. Introduction

Chief Justice Menon, Justices, fellow Judges, and guests, good evening to most of you, and good morning to some of you. It has been illuminating to hear from each one of you. The Judges of the Southern District of New York are delighted to participate as a founding member of the Judicial Dispute Resolution Network. I thought I would briefly touch upon the framework of our court system here in New York and then address alternative dispute resolution in the SDNY.

II. General Composition of Courts in the United States

The United States is comprised of two primary court systems: The Federal Courts and the State Court system in each of the 50 states. A state court has jurisdiction over disputes with some connection to that state. State courts handle the vast majority of civil and criminal cases in the United States. On the other hand, the United States federal courts are far smaller in terms of both personnel and caseload, and handle different types of cases.

Each state is free to organize its courts as it sees fit, and consequently, no two states have identical court structures. Take New York, for example, one state of the United States: the trial court is called the New York Supreme Court. In addition, there is a branch in each of New York's 62 counties where the New York State County Courts operate. There are also Civil, Criminal Courts, County District Courts, Justice Courts, Family Courts, Surrogate's Courts, and Courts of Claims. The Federal Court system operates differently than the state system. I sit in a trial-level court in the Federal Court system, the Southern District of New York. Cases involve questions concerning federal statutes, or cases involving citizens of different

states in which the amount in controversy exceeds \$75,000. Once a case is assigned to me, for example, it is mine for all purposes.

The United States has 94 trial-level courts called United States District Courts in each of the 94 districts. The Southern District of New York is one of the 94. There are 654 Federal Judges around the country. The SDNY is the first sitting court in the United States and is referred to as the “Mother Court.” This year will be the 233rd anniversary of the first session of the District of New York (as it was then referred to) conducted by Judge James Duane on the first Tuesday of November, 1789. It was the first sitting of any Court created under the new Constitution and predated the first sitting of the Supreme Court by several months.

There is at least one district court in each state, and the District of Columbia. Each district includes a U.S. bankruptcy court as a unit of the district court. Four territories of the United States have U.S. district courts that hear federal cases including bankruptcy cases. There are also two special trial courts: the Court of International Trade and the U.S. Court of Federal Claims. Again, taking New York as an example, there are four districts: Northern, Southern, Eastern, and Western. I am speaking to you from the White Plains division of the Southern District of New York. As you can hear, we have a complex structure in the United States. We can only speak to operations in the Southern District of New York. However, we can’t speak to operations in, say, the Supreme Court of the State of New York, or any other District Court.

III. S.D.N.Y. ADR Options

The Federal Rules of Civil Procedure govern the procedure in all civil actions and proceedings in the United States district courts. Rule 1 of the Federal Rules of Civil Procedure provides that the rules should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding. Here in the Southern District of New York, we have two main types of Alternative Dispute Resolution Programs offered by the Court: settlement conferences with a Magistrate Judge, and the Court-Annexed Mediation Program. The main reason is that the District judge assigned to the case is the trial judge.

In Magistrate Judge Settlement Conferences, the Magistrate Judges serve in a United States district court and are assigned duties by the district judges in the district in which they serve. Magistrate judges may preside over most phases of

federal proceedings, including settlement conferences. When the parties first appear for a conference with the District Judge, mediation/settlement is discussed. Many litigants choose this option over involving the trial Judge for many reasons. We also have a Court-Annexed Mediation Program. The Court's mediation program has offered mediation to litigants since 1992. We have a fully staffed and well organized mediation office within our SDNY courthouse. The mediation director and her staff organize, maintain, and grow the mediation program in the SDNY.

The program has a roster of approximately 243 volunteer attorney mediators with a range of experience and specialization. The mediators are trained in basic mediation principles and are required to take continuing legal education during their tenure. The mediation process traditionally takes place in person at the courthouse or at the mediator's office. Since COVID, many take place by zoom. Prior to mediation, the parties exchange any discovery needed to help resolve the mediation issues. Statistics show that in 2021, there were approximately 11,227 civil cases filed in the Southern District of New York. There was an issuance of 1,483 referrals to the mediation program. Some are automatically referred to the program based on the topic. Others are referred to the program by the trial Judge. 59% of the cases referred to the program are settled.

IV. Halpern Chambers Case Management

Individual judges as part of their own case management practices require various efforts from the parties directed at mediation and/or early settlement. I find that incorporating ADR into case management plans early in the litigation yields a high success rate. As I mentioned, certain case types will be automatically referred to mediation (i.e., FLSA, counseled employment discrimination, IDEA). In most civil cases, the Federal Rules of Civil Procedure require parties to meet, confer and propose a plan to bring their case to trial. They must also appear for an initial conference before the district judge.

I have the parties fill out a document called a Civil Case Discovery Plan and Scheduling Order. In addition to setting deadlines for various stages of discovery, I require the parties to file a joint letter concerning settlement/mediation within two weeks after the close of fact discovery. I also require the parties to do the following: Discuss and make an informal exchange of information in aid of early settlement, discuss the use of ADR mechanisms such as settlement conferences before a Magistrate Judge, participation in the Court's Mediation Program, and/or retention

of a privately retained mediator. When there is an automatic referral to mediation in the SDNY, there are also standing orders issued by our Chief Judge requiring parties to exchange specific types of documents and information in advance of the first mediation session. I do not find that parties want District Judges to be involved in their mediation, as the judge assigned to the case is the trial judge in every case. Although some parties do request it. All of our judges are sensitive to the need for early/inexpensive resolution of cases where possible.

V. Conclusion

Thank you for listening and I look forward to working with you as we progress to develop this international dispute resolution network. Hopefully we will all add to our processes.